



Rec'd PTO/PATENT 26 DEC 2001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Paul Phillip Van Saarloos and Jon Dishler  
Serial No. : 09/762824  
Filed : February 14 2001  
For : "Surgical visual feedback and eye fixation method and apparatus"

STATEMENT OF FACTS IN SUPPORT OF FILING ON BEHALF OF NONSIGNING  
INVENTORS (37 C.F.R. §1.47(b))

This statement is made as to the facts that are relied upon to establish the diligent effort made to secure the execution of the Declaration by the nonsigning inventors for the above-identified patent application.

Because signing on behalf of the nonsigning inventors is a person or entity showing a sufficient proprietary interest, this statement also recited facts as to why this action was necessary to preserve the rights of the parties or to prevent irreparable damage.

I, Simon Charles Martin state:

1. I am a citizen of the United Kingdom residing at 8 Traylen Grove, Mt Claremont, Western Australia, 6010, Australia.

2. I am authorized by the following person or juristic entity with sufficient proprietary interest,

Q-Vis Limited  
6 Gould Street  
Herdsmen, Western Australia 6017

My title is Company Secretary and Chief Financial Officer of Q-Vis Limited.

3. Upon information and belief, on August 14, 1999 The Lions Eye Institute of Western Australia (hereinafter "The Lions Eye Institute") filed International application No. PCT/AU99/00665 for "Surgical visual feedback and eye fixation method and apparatus", naming Paul Phillip Van Saarloos (hereinafter "Dr. Van Saarloos") and Jon Dishler as the inventors and claiming priority of Australian application No. PP5284 filed August 14, 1998.

4. Upon information and belief, a national stage application based upon International application PCT/AU99/00665 was filed in the United States on February 14, 2001, and was assigned Serial No. 09/762824 (hereinafter the "U.S. '824 application").

5. Appended hereto as Exhibit 1 is a copy of a letter dated January 18, 2001, that I sent to Corrs Chambers Westgarth, attorneys for Dr. Van Saarloos, enclosing, among other documents, a Combined Declaration and Power of Attorney and an Assignment for the U.S. '824 application. Neither Dr. Van Saarloos nor his attorneys responded to that letter. I wrote to Dr. Van Saarloos' attorneys because Q-Vis was by then in dispute with Dr. Van Saarloos, who had commenced proceedings against Q-Vis.

6. Appended hereto as Exhibit 2 is a copy of a letter dated March 9, 2001, that I sent to Dr. Van Saarloos' attorneys, Corrs Chambers Westgarth, again requesting execution, on an urgent basis, of the application documents for the U.S. '824 application and commenting briefly on matters arising from a conversation between attorneys respectively acting for Dr. Van Saarloos and Q-Vis. Neither Dr. Van Saarloos nor his attorneys responded to that letter.

7. Appended hereto as Exhibit 3 is a copy of a letter dated May 31, 2001 I sent to Dr. Van Saarloos' attorneys, again requesting the prompt execution of the documents previously forwarded with respect to the U.S. '824 application.

8. Appended hereto as Exhibit 4 is a copy of a faxed letter dated June 1, 2001 from Dr. Van Saarloos' attorneys to me advising that Dr. Van Saarloos would sign the documents requested in relation to the U.S. '824 application and other applications.

9. During a subsequent discussion between Q-Vis attorneys and Dr. Van Saarloos' attorneys, Dr. Van Saarloos' attorneys requested fresh documents to be prepared, including the Combined Declaration and Power of Attorney of Assignment for the U.S. '824 application. My colleague, Sharon Humphris, Patent Scientist, Q-Vis, Limited (hereinafter "Ms Humphris") requested Q-Vis' patent attorneys to prepare fresh documents for execution. Appended hereto as Exhibit 5 is a copy of a letter dated July 5, 2001 to Ms Humphris from Q-Vis' patent attorneys forwarding the new documents, including a Combined Declaration and Power of Attorney and an Assignment for the U.S. '824 application. Ms Humphris forwarded the new documents to Q-Vis' attorneys in July 2001 for despatch to Dr Van Saarloos' attorneys. A copy of the forwarding letter is appended hereto as Exhibit 6.

10. I again forwarded the Combined Declaration and Power of Attorney and the Assignment directly to Dr. Van Saarloos' attorneys in early October 2001, but to date he has not returned the executed documents. A copy of the forwarding letter is appended hereto as Exhibit 7.

11. Appended hereto as Exhibit 8 is a copy of a letter dated April 5, 2001 sent by Ms Humphris to the other inventor Dr. John Dishler (hereinafter "Dr. Dishler"), enclosing among other documents, a Combined Declaration and Power of Attorney and an Assignment for the U.S. '824 application. Dr. Dishler did not respond to that letter.

12. Appended hereto as Exhibit 9 is a follow up email dated April 19, 2001 from Ms Humphris to Dr. Dishler.

13. Appended hereto as Exhibit 10 is a copy of a letter dated May 31, 2001 I sent to Dr. Dishler again requesting the prompt execution of the documents previously forwarded to him with respect to the U.S. '824 application. Dr. Dishler did not respond to that letter and to date has not returned the executed documents.

14. The execution and filing of the Declaration by Q-Vis is necessary to preserve the rights of the parties and to prevent irreparable harm which would result from the loss of priority rights to International patent application No. PCT/AU99/00665 and Australian patent application No. PP5284.

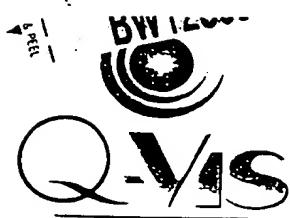
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such wilful false statements may jeopardize the validity of the application or my patent issued thereon.

Date: 14 November 2001



Simon Charles Martin

CONFIDENTIAL



Q-Vis Limited  
ACN 009 234 173  
ABN 98 009 234 173

6 Gould Street  
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Australia  
Locked Bag 6  
Osborne Park, Perth WA 6916  
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Telephone: +61-8 9443 0700  
Facsimile: +61-8 9443 0711  
<http://www.q-vis.com>

January 18, 2001

Corrs Chambers Westgarth  
150 St Georges Terrace  
Perth WA 6000  
Attention: Ms Caroline Brown

By Facsimile Transmission: (08) 9322 6953

Dear Sirs

**PAUL VAN SAARLOOS – YOUR REFERENCE CXB/MS. VANS0393-1250059  
NEW PATENT APPLICATIONS IN CANADA AND THE UNITED STATES  
NATIONAL PHASE ENTRY OF PCT/AU99/00665  
“SURGICAL VISUAL FEEDBACK AND EYE FIXATION METHOD AND APPARATUS”**

The above referenced patent application ('FIXATION LIGHT') is presently entering the national phase of review. As a result the following documents require the signature of Dr. Paul van Saarloos and return to our office by noon Thursday 25 January 2001:

- Assignment document for the Canadian application
- Assignment document for the US applications
- Combined Declaration / Power of Attorney for the US

The originals will be sent to you today.

For our records in dealing with the patents office, a detailed explanation from Dr. van Saarloos as to why he named Dr Jon Dishler as a co-inventor on this case is also required, as is an explanation of exactly what it is contended by Dr. van Saarloos that Dr. Dishler may have contributed to the invention.

Please forward the executed documents to the attention of the undersigned.

Yours sincerely,

Simon Martin  
Company Secretary

Encl.

March 9, 2001

Corris Chambers Westgarth  
GPO BOX 9925  
Perth, WA 6001

ATTENTION: Ms Caroline Brown

Dear Sirs

**PAUL VAN SAARLOOS**  
**NEW PATENT APPLICATIONS IN CANADA AND THE UNITED STATES**  
**NATIONAL PHASE ENTRY OF PCT/AU99/00665**  
**"SURGICAL VISUAL FEEDBACK AND EYE FIXATION METHOD APPARATUS"**

I refer to my letter dated 18 January 2001 and to your subsequent telephone conversation with the solicitor acting on behalf of the company, Tim Retallack on or about 9 February 2001.

I understand that your client may require more details of this particular application although no written request outlining the details your client requires has been made to date. Dr van Saarloos was named as an inventor in 1998, his approval for the provisional patent application having been given in August 1998. I enclose a copy of the published International Application for Dr van Saarloos' reference.

Please note that the company requires Dr van Saarloos to complete the documentation forwarded to your office on 18 January 2001 on an urgent basis so that the application may proceed. Accordingly I look forward to the receipt of the executed documents by 15 March 2001.

Yours faithfully

SIMON MARTIN  
**COMPANY SECRETARY**

enc

*SMV Enc copy  
9.3.01*



Q-VIS Limited  
ACN 009 234 173  
ABN 98 009 234 173

6 Gould Street  
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Australia

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Telephone: +61-8 9443 0700  
Facsimile: +61-8 9443 0711  
<http://www.q-vis.com>

May 31, 2001

By facsimile: 9322 6953

Corrs Chambers Westgarth  
GPO BOX 9925  
Perth, WA 6001

ATTENTION: Ms Caroline Brown / Mr Mark Dwyer

Dear Sirs

**PAUL VAN SAARLOOS**  
**NEW PATENT APPLICATIONS IN CANADA AND THE UNITED STATES**  
**NATIONAL PHASE ENTRY OF PCT/AU99/00665**  
**"SURGICAL VISUAL FEEDBACK AND EYE FIXATION METHOD APPARATUS"**

I refer to my letters dated 18 January 2001 and 9 March 2001 and to your telephone conversation with the solicitor acting on behalf of the company, Tim Retallack, on or about 9 February 2001.

Despite the further information provided to your office in our letter of 9 March 2001, we have heard nothing further from your client.

Please note that unless Dr van Saarloos completes the documentation forwarded to your office on 18 January 2001 by Monday, 4 June 2001, I will assume that he is refusing to co-operate and instruct our solicitors accordingly.

Yours faithfully

SIMON MARTIN  
COMPANY SECRETARY

**Freehills**  
Carter Smith Beadle

5 July 2001

Our ref GJN:cl 40469825

Phone 03 9288 1578

Doc no MELCD\003849211V3.DOC

Ms Sharon Humphris  
Q-Vis Limited  
6 Gould Street  
HERDSMAN WA 6017

**By Courier**

Dear Sharon

**Q-Vis Limited  
Canadian and United States applications  
Documents for Paul Van Saarloos**

We refer to your discussion with Greg Noonan and now enclose the following forms to be executed by Paul Van Saarloos:

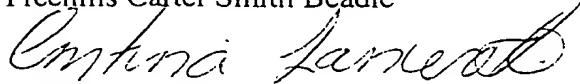
1. Assignment for the United States for "Eye Tracker for Refractive Surgery".
2. Assignment for the United States for "Surgical Visual Feedback and Eye Fixation Method and Apparatus".
3. Combined Declaration/Power of Attorney for "Surgical Visual Feedback and Eye Fixation Method and Apparatus".
4. Combined Declaration/Power of Attorney for "Eye Tracker for Refractive Surgery".
5. Assignment for Canada for "Surgical Visual Feedback and Eye Fixation Method and Apparatus".
6. Assignment for Canada for "Eye Tracker for Refractive Surgery".

You will note that we amended Mr Saarloos address slightly to read "Street" instead of "Road".

We look forward to the early receipt of these documents.

Yours sincerely

Freehills Carter Smith Beadle



Cristina Lancerotto  
Foreign Filing Paralegal  
enc.

**Patent & Trademark Attorneys**

101 Collins Street Melbourne Vic 3000 Australia      Telephone 61 3 9288 1577 Facsimile 61 3 9288 1567  
GPO Box 128A Melbourne Vic 3001 Australia      www.fcsb.com.au

Offices in SYDNEY MELBOURNE      Registered Patent Attorneys in Australia & New Zealand



L A W Y E R S

1 June 2001

BY FACSIMILE NO: 9443 0711

Simon Martin  
 Company Secretary  
 Q-Vis Limited  
 6 Gould Street  
 HERDSMAN WA 6017

Contact:  
 Mark Dwyer (08) 9321 8531  
 Email: [Mark\\_Dwyer@corrs.com.au](mailto:Mark_Dwyer@corrs.com.au)

Partner:  
 Carothe Brown

Our reference:  
 CXB/MFD/VANS0393-1250059

Dear Sir

**PATENT APPLICATIONS**

**"SURGICAL VISUAL FEEDBACK AND EYE FIXATION METHOD APPARATUS"**

**"EYE TRACKER FOR REFRACTIVE SURGERY"**

We refer to your two facsimiles to us dated 31 May 2001 concerning our client signing the patent papers relating to the above.

We have only just received instructions from our client that he will be executing the documentation.

We can say however as a matter of practicality you will not receive the documents by 5:00pm on Monday, 4 June 2001.

Given the existing state of litigation between the parties it is proper for future correspondence to be made through solicitors and no further direct correspondence will be entered into with you by this firm on behalf of Dr Van Saarloos.

Yours faithfully  
**CORRS CHAMBERS WESTGARTH**  
*M/Dwyer*  
 Mark Dwyer  
 Senior Associate

copy:  
 Tim Retallick  
 Wilson & Atkinson  
 (Ref: TMR:5409L-9)  
 Fax: 9481 5554

COMMONWEALTH BANK BUILDING 150 ST GEORGE'S TERRACE PERTH WA 6000  
 GPO BOX 9925 WA 6000  
 TELEPHONE (08) 9321 8531 INT 4618 9321 8531 FAX (08) 9322 6953  
 DX 126 PERTH

P/61251/1 MELBOURNE BRISBANE PERTH CANBERRA GOLD COAST

# FILE COPY

October 15, 2001

Corrs Chambers Westgarth  
GPO BOX 9925  
PERTH WA 6001



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<http://www.q-vis.com>

Attention: Ms Caroline Brown / Mr Mark Dwyer

Dear Sirs,

DR. PAUL VAN SAARLOOS

NATIONAL PHASE ENTRY OF PCT/AU99/00665 & PCT/AU00/00978

- (I) "SURGICAL VISUAL FEEDBACK AND EYE FIXATION METHOD & APPARATUS"
- (II) "EYETRACKER FOR REFRACTIVE SURGERY"

We refer to our previous correspondence in this matter and your facsimile of 22 June 2001 and enclose the following forms to be executed by Paul van Saarloos:

1. Assignment for the United States for "Eye Tracker for Refractive Surgery".
2. Assignment for the United States for "Surgical Visual Feedback and Eye Fixation Method & Apparatus".
3. Combined Declaration/Power of Attorney for "Eye Tracker for Refractive Surgery".
4. Combined Declaration/Power of Attorney for "Surgical Visual Feedback and Eye Fixation Method & Apparatus".
5. Assignment for Canada for "Eye Tracker for Refractive Surgery".
6. Assignment for Canada for "Surgical Visual Feedback and Eye Fixation Method & Apparatus".

Dr van Saarloos' address has been changed to read "Dunster Street" instead of "Dunster Road" and the assignments have been altered in favour of Q-Vis.

Please return the executed forms to me by close of business 22 October 2001.

Yours sincerely

Simon Martin  
COMPANY SECRETARY



July 6, 2001

*FILE COPY*

Mr. Tim Retallack  
Wilson & Atkinson  
2<sup>nd</sup> Floor, QVI Building  
250 St. St Georges Terrace  
PERTH, WA 6000

Q-Vis Limited  
ACN 009 234 173  
ABN 98 009 234 173

6 Gould Street  
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Osborne Park, Perth WA 6916  
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Facsimile: +61-8 9443 0711  
<http://www.q-vis.com>

Dear Tim,

**PATENT DOCUMENTS FOR EXECUTION BY PAUL VAN SAARLOOS**

As discussed previously, please find enclosed the following forms to be executed by Paul van Saarloos:

1. Assignment for the United States for "Eye Tracker for Refractive Surgery".
2. Assignment for the United States for "Surgical Visual Feedback and Eye Fixation Method & Apparatus".
3. Combined Declaration/Power of Attorney for "Eye Tracker for Refractive Surgery".
4. Combined Declaration/Power of Attorney for "Surgical Visual Feedback and Eye Fixation Method & Apparatus".
5. Assignment for Canada for "Eye Tracker for Refractive Surgery".
6. Assignment for Canada for "Surgical Visual Feedback and Eye Fixation Method & Apparatus".

Dr van Saarloos' address has been changed to read "Dunster Street" instead of "Dunster Road" and the assignments have been altered in favour of Q-Vis.

If you have any further queries, please do not hesitate to contact me on 9443 0765 or via email [SharonHumphris@q-vis.com](mailto:SharonHumphris@q-vis.com).

Yours sincerely

Sharon Humphris  
PATENT SCIENTIST



Q-Vis Limited  
ACN 009 234 173  
ABN 98 009 234 173

April 5, 2001

Dr Jon Dishler  
DTC Eye Surgery Centre  
8400 East Prentiss Avenue, Suite 1200  
ENGELWOOD COLORADO 80111  
UNITED STATES OF AMERICA

6 Gould Street  
Herdsman, Perth WA 6017  
Australia  
Locked Bag 6  
Osborne Park, Perth WA 6916  
Australia  
Telephone: +61-8 9443 3700  
Facsimile: +61-8 9443 3711  
<http://www.q-vis.com>

Dear Dr Dishler

**"Surgical Visual Feedback and Eye Fixation Method and Apparatus"**  
PCT/AU98/00665

We refer to our previous correspondence in this matter and enclose, for your reference, a copy of the Power of Attorney and Assignment signed by you in 1999.

We now enclose the following documents for your signature so as to further progress the patent application:

1. Assignment relating to Canada;
2. Assignment relating to the United States and
3. Combined Declaration/Power of Attorney relating to the United States.

We would be grateful if you could sign and return the documents as soon as possible. In the meantime, should you have any queries, please do not hesitate to contact me via e-mail at [SharonHumphris@q-vis.com](mailto:SharonHumphris@q-vis.com) or telephone +61 8 9443 3700.

Yours sincerely,

Sharon Humphris  
Intellectual Property and Medical Affairs Associate



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 Delivery Date/Time 04/09/2001 09:21  
 Signed For By S.SMITH  
 Service Type Priority Letter

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|--|---------------------|---------------------------------|
| Delivered ENGLEWOOD CO                             | 04/09/2001<br>09:21 |                                 |
| On FedEx vehicle for delivery ENGLEWOOD CO         | 04/09/2001<br>07:36 |                                 |
| Arrived at FedEx Destination Location ENGLEWOOD CO | 04/09/2001<br>06:46 |                                 |
| Left FedEx Ramp DENVER CO                          | 04/09/2001<br>05:30 |                                 |
| Package status DENVER CO                           | 04/08/2001<br>20:04 | Package in FedEx location       |
| Arrived at FedEx Ramp DENVER CO                    | 04/08/2001<br>17:13 |                                 |
| Left FedEx Sort Facility MEMPHIS TN                | 04/08/2001<br>16:07 |                                 |
| Left FedEx Sort Facility MEMPHIS TN                | 04/08/2001<br>10:15 |                                 |
| Left FedEx Sort Facility MEMPHIS TN                | 04/08/2001<br>09:56 |                                 |
| Package status LOS ANGELES CA                      | 04/07/2001<br>15:20 | Package available for clearance |
| Arrived at FedEx Ramp ALEXANDRIA AU                | 04/07/2001<br>08:47 |                                 |
| Left FedEx Ramp ALEXANDRIA AU                      | 04/07/2001<br>07:18 |                                 |

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From

To

To

To

**Sharon Humphris**

---

**From:** Sharon Humphris  
**Sent:** Thursday, 19 April 2001 12:17  
**To:** 'lasik@dishler.com'  
**Subject:** Message for Dr. Dishler Re: "Surgical Visual Feedback & Eye Fixation Method and Apparatus"  
  
**Importance:** High  
**Sensitivity:** Confidential

Dear Dr. Dishler,

**RE: International Patent Application PCT/AU99/00665**  
**"Surgical Visual Feedback & Eye Fixation Method and Apparatus"**

We would be grateful if you could advise at your earliest convenience as to when we might receive the documents (sent via FEDEX) that required your signature for the above referenced patent application.

Should you have any queries about these documents, please do not hesitate to contact me.

Yours sincerely,  
**Sharon Humphris**  
Intellectual Property & Medical Affairs Associate  
Q-Vis Limited

Direct: +61 8 9443 0765  
Fax: +61 8 9443 0711  
Email: [SharonHumphris@q-vis.com](mailto:SharonHumphris@q-vis.com)  
[www.q-vis.com](http://www.q-vis.com)

| Tracking: | Recipient           | Delivery                  |
|-----------|---------------------|---------------------------|
|           | 'lasik@dishler.com' |                           |
|           | helenwoodford       | Delivered: 19/04/01 12:17 |



May 31, 2001

Dr Jon Dishler  
DTC Eye Surgery Centre  
8400 East Prentice Avenue, Suite 1200  
ENGELWOOD, COLORADO 80111  
UNITED STATES OF AMERICA

Dear Dr Dishler

**"SURGICAL VISUAL FEEDBACK AND EYE FIXATION METHOD AND APPARATUS"**  
**PCT/AU98/00665**

I refer to our letter of 5 April 2001, in which the following documentation was enclosed for your signature:

1. Assignment relating to Canada
2. Assignment relating to the United States
3. Combined Declaration and Power of Attorney relating to the United States.

I note that we have not yet received your response and I am unaware as to the reason for the delay. As observed in the above-mentioned letter, the PCT Power of Attorney and the Assignment to Lions Eye Institute of Western Australia (Inc) relating to this patent application were previously signed by you on 20 October 1999.

For your information I also enclose a copy of the patent application.

Please note that unless I receive the documents executed as per our request on or before **18 June 2001**, I will assume that you are refusing to sign the documents and will instruct our solicitors accordingly.

Should you have any questions regarding this matter, please do not hesitate to contact me via email at SimonMartin@q-vis.com or telephone + 61 8 9443 0700.

Yours sincerely

A handwritten signature in black ink, appearing to read "Simon Martin".

Simon Martin  
COMPANY SECRETARY

enc